IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

VIRGINIA CARRERA-AMARO and FERNANDO R. SANTANA, wife and husband on behalf of themselves and all others similarly situated, Appellants, v. STATE OF WASHINGTON DEPARTMENT OF LICENSING, Respondent.	No. 38731-0-II UNPUBLISHED OPINION

Bridgewater, J. — Virginia Carrera-Amaro appeals the summary judgment dismissal of her public records act claim. She contends that her request to the Washington Department of Licensing for information pertaining to a driver's ability to pay for damages pursuant to former

RCW 46.29.050(2) (2002) of the financial responsibility act was a public records request. We affirm.

Facts

On November 28, 2005, Carrera-Amaro was involved in an auto accident with an uninsured motorist, Angelica Fabian. On March 1, 2006, Carrera-Amaro's attorney wrote to the Washington Department of Licensing requesting information regarding Fabian in the form of an abstract as provided by former RCW 46.29.050(2) (2002).[1] The letter identified the parties and the date of the accident. It provided a copy of the police collision report as an attachment and an estimate of alleged damages to Carrera-Amaro. The letter stated in relevant part: "Pursuant to [former] RCW 46.29.050(2) counsel for client named above requests all information of record in the department pertaining to the evidence of ability of the driver and owner listed above to respond to damages." CP at 64. The letter concluded by stating, "Please . . . provide counsel with abstract pursuant to RCW 46.29.050(2)." CP at 64.

The department received the letter on March 6, 2006, but accidentally misfiled it. The letter was mistakenly placed among the department's backlogged accident reports.[2] Some 14 months later, on May 29, 2007, department personnel found the letter while working through the accident report backlog and responded to counsel's "request for information" that same day. CP at 66. Neither Carrera-Amaro nor her attorney contacted the department during the 14-month interim about the abstract request. By the time the department responded to the request, Camera-

[1] The statute's fee structure was amended in 2007, but that change is not relevant here. *See* Laws of 2007, ch. 424, § 2 (effective Aug. 1, 2007).

[2] It is undisputed that the department's accident processing section has an 18-month backlog.

Amaro had already settled with the at-fault driver.

About seven months later, on December 31, 2007, Carrera-Amaro filed a class action complaint alleging violation of the public records act (PRA) chapter 42.56 RCW, and the administrative procedures act (APA) chapter 34.05 RCW. The complaint alleged in part that the department failed to respond to her information request within five days and sought fees and penalties of $100 per day pursuant to RCW 42.56.550 for each day the plaintiffs had been denied the right to a copy of the requested information.

On February 1, 2008, the department filed a CR 12(b)(6) motion to dismiss the public records act claim. On February 11, Carrera-Amaro filed a cross motion for partial summary judgment on her PRA and APA claims. Both motions were heard on March 7, 2008. The department asked the trial court to consider its motion as a summary judgment motion, *see* CR 12(b) (so providing), and the court did so.

The trial court granted the department's summary judgment motion dismissing Carrrera-Amaro's PRA claim, holding that the PRA did not apply, but reserved ruling on the APA claim. The parties subsequently stipulated to dismissal of the APA claim without prejudice. Carrera-Amaro petitioned the Supreme Court for direct review, but that court transferred the case to this court.

Discussion

Carrera-Amaro contends that the trial court erred in granting the department summary judgment on her PRA claim. We disagree.

We review all agency actions challenged under the public records act de novo.

Progressive Animal Welfare Soc'y v. Univ. of Wash., 125 Wn.2d 243, 252, 884 P.2d 592 (1994). Because this case was decided on summary judgment, this court examines whether disputed issues of material fact exist and whether the department was entitled to judgment as a matter of law. *Smith v. Okanogan County*, 100 Wn. App. 7, 11, 994 P.2d 857 (2000). There are no disputed material facts. The only issue is whether the trial court correctly determined that the PRA does not apply.

The purpose of the PRA is to provide "full access to information concerning the conduct of government on every level . . . as a fundamental and necessary precondition to the sound governance of a free society." RCW 42.17.010(11). The public records act, RCW 42.56.001-.902 (formerly codified as RCW 42.17.250-.348 in the public disclosure act (PDA), requires all state and local agencies to disclose any public record upon request, unless it falls within certain specific enumerated exemptions. *See Sperr v. City of Spokane*, 123 Wn. App. 132, 136, 96 P.3d 1012 (2004); *King County v. Sheehan*, 114 Wn. App. 325, 335, 57 P.3d 307 (2002); RCW 42.56.070(1). The requested record must be made available "for public inspection and copying." RCW 42.56.070(1). The Washington Department of Licensing is an "agency" subject to the provisions of the act. RCW 42.17.020(2) (defining agency to include any state office or department) (Laws of 2005, ch. 445, § 6); *see also* RCW 42.56.010 (referencing RCW 42.17.020) (Laws of 2005, ch. 274, § 101).

Public records subject to inspection under the act include (1) any writings (2) that contain information related to the "conduct of government or the performance of any governmental or proprietary function" and (3) that are "prepared, owned, used, or retained by any state or local

agency regardless of physical form or characteristics." RCW 42.56.010; RCW 42.17.020(42). However, an agency has no duty under the PRA to create or produce a record that does not exist at the time the request is made. *Sperr*, 123 Wn. App. at 136-37; *Smith*, 100 Wn. App. at 13-14. Further a request under the PRA must be for an *identifiable public record*, *see Hangartner v. City of Seattle*, 151 Wn.2d 439, 447-48, 90 P.3d 26 (2004), and a mere request for *information* does not so qualify. *Wood v. Lowe*, 102 Wn. App. 872, 879, 10 P.3d 494 (2000); *Bonamy v. City of Seattle*, 92 Wn. App. 403, 410-12, 960 P.2d 447 (1998), *review denied*, 137 Wn.2d 1012 (1999). Moreover, while there is no official format for a valid PDA request, "a party seeking documents must, at a minimum, [1] provide notice that the request is made pursuant to the PDA[/PRA] and [2] identify the documents with reasonable clarity to allow the agency to locate them." *Hangartner*, 151 Wn.2d at 447.

The March 1, 2006, letter to the department from Carrera-Amaro's attorney clearly states that its request for information and an abstract was made "[p]ursuant to [former] RCW 46.29.050(2)."[3] CP at 64. As can be seen, nothing in the letter indicates it is a PRA request brought pursuant to chapter 42.56 RCW, and in fact the letter expressly states that the basis for the request is a different statute. Accordingly, the letter does not state a PRA request. *See Hangartner*, 151 Wn.2d at 447.

Moreover, the statute cited in the letter provides in pertinent part:

> The department shall upon request furnish any person who may have been injured in person or property by any motor vehicle, with *an abstract of all information of record in the department pertaining to the evidence of the ability of any driver or owner of any motor vehicle to respond in damages*.

[3] The letter also asks the department to determine the amount of security, if any, required under RCW 46.29.070, but that inquiry is not pertinent for present purposes.

Former RCW 46.29.050(2) (emphasis added). By its terms, the statute provides only for *an abstract*, or summary, of pertinent information held in the department's records. It is undisputed that such an abstract is not created until the department receives a request for such compilation. Accordingly, the abstract that Carrera-Amaro's attorney requested did not exist at the time the request was made. As noted, an agency has no duty under the PRA to produce a document that does not exist. *Sperr*, 123 Wn. App. at 136-37; *Smith*, 100 Wn. App. at 13-14. Accordingly, the request here to create an abstract under former RCW 46.29.050(2), did not implicate the PRA.

Carrera-Amaro argues that the letter makes two pertinent requests, one request for an abstract, and another request for "all information of record in the department" pertaining to Fabian's ability to pay damages. CP at 64. This attempt to bifurcate her request does not assist her, however. As noted, the PRA requires agencies to produce only identifiable public records, *Hangartner*, 151 Wn.2d at 448, and a general request for information is not a request for an identifiable public record. *Wood*, 102 Wn. App. at 879; *Bonamy*, 92 Wn. App. at 410-12.[4]

In sum, for the reasons discussed we hold that the trial court did not err in granting summary judgment to the department dismissing Carrera-Amaro's PRA claim. *Sperr*, 123 Wn. App. at 137; *Bonamy*, 92 Wn. App. at 412.

[4] Carrera-Amaro also cites to *N. L. R. B. v. Sears, Roebuck & Co*., 421 U.S. 132, 161-62, 95 S. Ct. 1504, 44 L. Ed. 2d 29 (1975), which addressed a request under the federal Freedom of Information Act (FOIA). But the language she relies upon from *N. L. R. B. v. Sears* does not appear to assist her. Moreover, that case is distinguishable because the request at issue was clearly made pursuant to FOIA; and, in any event, we are bound by the Washington Supreme Court's decisions, such as *Hangartner*, interpreting the PRA. *See State v. Gore*, 101 Wn.2d 481, 487, 681 P.2d 227 (1984) ("once this court has decided an issue of state law, that interpretation is binding on all lower courts until it is overruled by this court"). *N. L. R. B. v. Sears* provides no basis for altering our decision.

Our determination that the PRA does not apply also disposes of Carrera-Amaro's contention that she is entitled, under RCW 42.56.550(4), to attorney fees, costs, and a penalty of $100 for each day the department failed to furnish the requested abstract. The noted statute provides for an award of fees, costs, and penalties to a party who *prevails* against an agency in an action regarding a "public record request." RCW 42.56.550(4). Because the PRA does not apply, the award provisions contained in RCW 42.56.550(4) are likewise unavailable. Accordingly, we deny Carrera-Amaro's requests for fees, costs, and penalties.

Carrera-Amaro also lists in her conclusion several requests without any discussion. She first requests injunctive and declarative relief requiring the department to provide abstracts under chapter 46.29 RCW within five days of receiving a request for same. Second, she requests return of the fees paid plus interest for requested records not timely provided. Third, she requests remand to the trial court to determine issues related to class certification and calculation of damages. As noted, the parties stipulated to dismissal without prejudice of Carrera-Amaro's APA claim to facilitate review of the summary judgment determination on her PRA claim. The latter determination is all that is before us. The trial court has rendered no decision on the other matters appearing in Carrera-Amaro's requests. Accordingly, those matters are not properly before us and Carrera-Amaro's requests are denied.[5]

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the

[5] In any event, passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration. *Westmark Dev. Corp. v. City of Burien*, 140 Wn. App. 540, 556, 166 P.3d 813 (2007), *review denied*, 163 Wn.2d 1055 (2008).

Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, J.

We concur:

Van Deren, C.J.

Penoyar, J.